the confiscated items shall be maintained by the official confiscating the same".

10. *Amendment of section 27.*— In section 27 of the principal Act, for the letters and figures "Rs. 2,000/-", the letters and figures "Rs. 10,000/-" shall be substituted.

11. *Amendment of section 28.*— In section 28 of the principal Act, in sub-section (*1*), for the letters and figures "Rs.10,000/-", the letters and figures "Rs. 20,000/-" shall be substituted.

Secretariat, Porvorim-Goa. Dated:15-6-2011.

PRAMOD V. KAMAT
Secretary to the Govt. of Goa,
Law Department (Legal Affairs).

Department of Science, Technology & Environment

Policy

GCZMA/H. COURT MATTER/07/656/
/Part IV/311

Policy for utilization of available open plots in CRZ-III Zone for the purpose of establishing Hotels/Beach Resorts

Background

1. As per paragraph 32(D) of the directions contained in the Judgement and Order of the Hon'ble High Court of Bombay at Goa, Panaji, in Writ Petition No. 422 of 1998 (Goa Foundation v/s Village Panchayat of Candolim & ors.) with Writ Petition No. 99 of 1999 (Goa Foundation v/s Village Panchayat of Calangute & ors.), the State Government has been directed-

> "to identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/ /regulation for utilization thereof before they are being allowed to be utilized for such construction activities."

2. The Goa Coastal Zone Management Authority (GCZMA)/Department of Science, Technology and Environment (DSTE), Government of Goa entrusted this task of identifying and delineating the open vacant plots above an area of 4000 sq. mts., in CRZ-III zone along the coastline of the State of Goa to M/s. Remote Sensing Instruments (RSI), Hyderabad. This Agency had carried out the task of identification of structures existing as in 1991 when the CRZ Notification, 1991 came into force and the structures that came up subsequently by temporal study of satellite imagery between 1991 and 2006 followed by field checks as per directions of the Hon'ble High Court in the same Writ Petitions detailed above. These reports were periodically submitted before the Hon'ble High Court and the data products/mapping of structures in form of survey plans were submitted to the Coastal Village Panchayats/ /Municipality in terms of the directions of the Hon'ble High Court in M.C.A. No. 427 of 2007 in W. P. No. 422 of 1998 dated 18th March, 2008.

3. M/s. RSI, Hyderabad has interpreted rectified satellite data, on line to identify and delineate contiguous open plots measuring 4000 sq. mts. and above in the CRZ-III areas of Goa. By overlaying the geo-referenced revenue maps, the locations of each of these open plots in terms of survey numbers and sub-division number have been tabulated and broad landuse patterns in these plots have also been tabulated.

An atlas of the open plots in CRZ-III of all the villages has been made on 1:5000 scale and a table in MS Excel format showing the identification number (ID No.) of each plot, its locations in terms of survey of sub-division number and broad landuse/landcover pattern in these open plots has also been prepared.

M/s. RSI, Hyderabad has submitted a soft copy in portable document format.

4. In its report M/s. RSI, Hyderabad has indicated certain minor limitations to this study, as interpretation of the satellite data is with reference to the year 2005 and the landuse/landcover would need to be

ascertained by interpreting latest satellite imagery and/or field checks. Some of the open plots appear to fall in forest, which can be separated by overlaying the reserved forest map of the Forest Department, as and when required. Similarly some open plots fall in sand dune areas, which can be identified and separated. Many open plots fall in cultivated areas which need to be identified to ascertain the present status of cultivation/landuse. These features can be identified during site inspection separately.

Provisions of New CRZ Notification, 2011

5. The Ministry of Environment and Forests (MoEF), Government of India has notified the new Coastal Regulation Zone (CRZ) Notification, 2011 (S.O. No. 19(E) dated 6th January, 2011). Annexure-III to the CRZ Notification, 2011 defines the requirements and guidelines for development of beach resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with prior approval of the Ministry of Environment and Forests. The same is enclosed as APPENDIX-I.

For any new development of a Hotel/Beach Resort/Motels or any structure with rooms for the purpose of temporary accommodation of visiting tourists, to be undertaken within 200 m. to 500 m. shall require to follow the guidelines as detailed above, subject to the State Government Development and Planning Regulations and Policy.

Provisions contained in Regional Plan for Goa, 2021

6. The Town and Country Planning Department, Government of Goa, has prepared the draft Regional Plan for Goa-2021 (RPG-21). As per draft RPG-21, all CRZ areas are classified as Other Eco-Sensitive zones (ECO-2), except CRZ-I areas, which are classified as Eco-Sensitive zones (ECO-1). Any development in ECO-2 areas will be as per CRZ guidelines.

The Town and Country Planning Department has vide Final Report, RPG-21 (Release One) dated 23rd November, 2010; has specified guidelines and has indicated that beach resorts/hotels/motels would be permitted on special conditions in Settlement Zone as mapped and defined in the land use maps approved by the Government [*Reference: Appendix XI of the Final Report, RPG-21 (Release One)*].

The Final Report, RPG-21 (Release One) also indicates a policy for Coastal and Hinterland Eco-Tourism for development in backward talukas for specific areas earmarked as a marker for development in the plans approved by the Government. [*Reference: Chapter 4.2.2 (a) of the Final Report, RPG-21 (Release One)*].

Guidelines for considering project proposals for Hotels/Beach Resorts in CRZ-III areas

7. Every proposal received by the GCZMA, will be forwarded for examination and assessment by the Goa State Expert Appraisal Committee (Goa-SEAC), in the first instance. While examining the proposal of any new Hotel related project in the open plots/spaces available, the Goa-SEAC, shall follow the guidelines as given below and incorporate the same in the Terms of Reference for the project proponents case:

(i) The land use/land cover as on site will be verified on ground by inspection. The surrounding land use pattern will be considered to determine the suitability of the land to be utilised for the purpose concerned.

(ii) The recommendations or findings of the Environmental Impact Assessment (EIA) report, will not be the sole criteria for determining the land use/suitability of the plot, for the purpose concerned. Additional reports on environmental standards/parameters pertaining to the site concerned, shall be identified and project proponents would be required to comply with the same.

(iii) Only those land areas, which are classified as "Settlement" in terms of

RPG- 21, will be considered for the purpose concerned.

(iv) The proposed project should essentially meet the requirements of recycling of effluents/sewage, efficient solid waste management practices and such other measures as directed by the Goa State Pollution Control Board.

(v) The proposed project's endeavour should be to meet 'Green' initiatives such as water harvesting (wherever feasible), use of solar and other renewable energy resources for lighting, heating etc.

(vi) The proposed project should be compliant to the standards prescribed under Environment (Protection) Rules, 1986 (as amended) and should also provide for compliance to the standards and conditions under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

(vii) All guidelines prescribed in CRZ Notification, 2011 shall be strictly followed.

8. On receipt of the proposal duly assessed and appraised by the Goa-SEAC, the same will be taken up for consideration by the GCZMA. Thereafter, the recommendations of the GCZMA and the appraisal of the Goa-SEAC, in respect of the project proposal shall be submitted to the Goa State Environmental Impact Assessment Authority (Goa-SEIAA) for its recommendations. Only on obtaining its favourable recommendations and with approval of the State Government, shall the project proposal be submitted to the MoEF for its consideration, in term of the CRZ Notification, 2011.

9. The conditions at para (7) and para (8), shall not apply to the hotel projects approved earlier by the State Government/MoEF or are in the process of being considered for approval by MoEF based on earlier State Government/GCZMA approvals.

10. This policy issues with the approval of the Government of Goa vide U. O. No. 96 dated 27th May, 2011.

Michael M. D'Souza, Director & ex officio Joint Secretary (STE).

Saligao, 10th June, 2011.

Appendix-I

ANNEXURE-III

Guidelines for development of beach resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation or tourist or visitors with prior approval of the Ministry of Environment and Forests

I. Construction of beach resorts or hotels with prior approval of MoEF in designated areas of CRZ-II and III for occupation of tourist or visitors shall be subject to the following conditions, namely:—

(a) the project proponent shall not undertake any construction within 200 metres in the landward side of High Tide Line and within the area between (Low Tide Line and High Tide Line in CRZ III)[1];

(b) the proposed constructions shall be beyond the hazard line or 200 mts. from the High Tide Line whichever is more;

(c) live fencing and barbed wire fencing with vegetative cover may be allowed around private properties subject to the condition that such fencing shall in no way hamper public access to the beach;

(d) no flattening of sand dunes shall be carried out;

(e) no permanent structures for sports facilities shall be permitted except construction of goal posts, net posts and lamp posts;

(f) construction of basement may be allowed subject to the condition that no objection certification is obtained from the State Ground Water Authority to the effect that such construction will not adversely affect free flow of groundwater in that area;

(g) the State Ground Water Authority shall take into consideration the guidelines issued by Central Government before granting such no objection certificate;

(h) though no construction is allowed in the no development zone for the purposes of calculation of Floor Space Index, the area of entire plot including the portion which falls within the no development zone shall be taken into account;

(i) the total plot size shall not be less than 0.4 hectares and the total covered area on all floors shall not exceed 33 percent of the plot size i.e., the Floor Space Index shall not exceed 0.33 and the open area shall be suitably landscaped with appropriate vegetal cover;

(j) the construction shall be consistent with the surrounding landscape and local architectural style;

(k) the overall height of construction upto the highest ridge of the roof, shall not exceed 9 metres and the construction shall not be more than two floors (ground floor plus one upper floor);

(l) groundwater shall not be tapped within 200 metre of the High Tide Line; within the 200 metre 500 metre zone it can be tapped only with the concurrence of the Central or State Ground Water Board;

(m) extraction of sand, levelling or digging of sandy stretches except for structural foundation of building, swimming pool shall not be permitted within 500 metres of the High Tide Line;

(n) the quality of treated effluents, solid wastes, emissions and noise levels and the like, from the project area must conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986;

(o) necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that the untreated effluents and solid wastes are not discharged into the water or on the beach; and no effluent or solid waste shall be discharged on the beach;

(p) to allow public access to the beach, atleast a gap of 20 metres width shall be provided between any two hotels or beach resorts and in no case shall gaps be less than 500 metres apart; and

(q) if the project involves diversion of forestland for non-forest purposes, clearance as required under the Forest (Conservation) Act, 1980 shall be obtained and the requirements of other Central and State laws as applicable to the project shall be met with; and

(r) approval of the State or Union territory Tourism Department shall be obtained.

II. In ecologically sensitive areas (such as marine parks, mangroves, coral reefs, breeding and spawning grounds of fish, wildlife habitats and such other area as may be notified by the Central or State Government Union territories) construction of beach resorts or hotels shall not be permitted.

****

(1) In Annexure III, in item 1 (a), in line 2, the words "Low Tide Line and High Tide Line" be read as at (1) above vide S.O. 651 (E) dated 29-03-2011.

Department of Tribal Welfare

Directorate of Tribal Welfare

Order

1/21/2011-12/ADMN/TWD/903

Sanction of the Government is hereby accorded for creation of following posts in the Goa State Commission for Scheduled Castes and Scheduled Tribes under the establishment of Directorate of Tribal Welfare with immediate effect.

Sr. No.	Designation	Pay scale	No. of posts
1.	Sweeper	To be out sourced	1

This issues with the recommendation of Administrative Reforms Department vide their U. O. No. 567/F dated 30-5-2011, concurrence of Finance (Rev. & Cont.) Department vide their U. O. No. 1438949 dated 30-5-2011.

By order and in the name of the Governor of Goa.

Dipak S. Desai, Director & ex officio Joint Secretary (Tribal Welfare).

Panaji, 2nd June, 2011.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

GOA BENCH, AT PANAJI

Stm No 2702

PIL Writ Petition No. 29 of 2011

The Goa Foundation)... Petitioners

v/s

GCZMA & ors)... Respondents

INDEX

Sr.No.	Description	PAGES
1.	Synopsis and Points to be Heard	A-B
2.	Memo of Petition	1 - 10
3.	Annexure A: Certificate of Registration of the association and names of office bearers and resolution	11-13
4.	Annexure B: Undertaking of petitioner	14
5.	Annexure C: Judgement dated 13.10.06 in WP 422 of 1998	15-57
6.	Annexure D: Gazette notification dated 16.6.2011 (policy)	58-61
7.	Annexure E: Maps	62-63
8.	Affidavit in support of petition	64-65

Panaji 29th July, 2011

Advocate for petitioner

A

IN THE BOMBAY HIGH COURT AT GOA

PIL WRIT PETITION NO. of 2011

SYNOPSIS AND CHRONOLOGY OF DATES AND EVENTS

Sr. No	Date	Particulars of events or documents if any	Annexure & Page
1	19.2.1991	CRZ notification is issued under the Environment Protection Act, 1986	
2	18.4 1996	Supreme Court directs High Courts to deal with violations	
3	1998/1999	Writ petitions filed to cure CRZ violations on Candolim and Calangute beaches	
4	13.10.2006	High Court judgement with directions to formulate policy for the State of Goa in line with CRZ notification	Ann.C p.15
5	6.11.2011	New CRZ Notification supersedes 1991 notification	
6	16.6.2011	Impugned policy is notified	Ann.D p.58
7	4.7.2011	Copy of policy filed in the High Court	
8	July 2011	Petition impugning policy is filed	

POINTS TO BE HEARD

The State of Goa has notified its policy for utilization of available open plots in CRZ III zone for the purpose of establishing hotels/beach resorts in the state of Goa as per the Coastal Regulation Zone Notification 1991/2011. This policy has been formulated pursuant to judgment of the Bombay High Court in writ

petitions No. 422/1998 and No. 99/1999. The policy declared by Goa government as per order dated 10th June 2011 and notified in the official gazette dated 16th June 2011 is contrary to the findings and directions of the said judgment itself and also the provisions of the CRZ notification. Hence this PIL.

ACTS/ RULES TO BE REFERRED

The CRZ Notifications dated 19.2.1991 and 6.1.2011

AUTHORITIES TO BE CITED

Bombay High Court judgement dated 13.10.2006

Panaji 29.07.2011

Advocate for petitioner

IN THE BOMBAY HIGH COURT AT GOA

PIL WRIT PETITION NO. 29 of 2011

IN THE MATTER OF ARTICLE 226 OF THE CONSTITUTION OF INDIA
AND
IN THE MATTER OF ARTICLES 48A AND 51A(g) OF THE CONSTITUTION OF INDIA
AND
THE PROVISIONS OF THE CRZ NOTIFICATION 1991/2011
AND
NOTIFIED POLICY FOR LOCATION OF BEACH RESORTS IN THE CRZ OF GOA

Goa Foundation, a society registered under
the Societies Registration Act, 1960,
through its Secretary, Dr. Claude Alvares,
Addr: Room 7, Above Mapusa Clinic,
Mapusa 403507, Goa
Email id: goafoundation@gmail.com
Tel: 2256479
PAN No: AAAAG0249C)....Petitioner

v/s

1. Goa Coastal Zone Management)
Authority, through its Member-Secretary)
Department of Science, Technology and)
Environment, Opp. Saligao Seminary,)
Saligao, Bardez, Goa.)

2. State of Goa through its Chief)
Secretary, Secretariat, Porvorim, Goa.)

3. The Secretary,)
Ministry of Environment & Forests,)
Paryavaran Bhavan, C.G.O. Complex,)
Lodi Road, New Delhi 110 003)....Respondents

Goa Chamber of Commerce - Intervenor

(The above are the registered addresses of parties.)

To

The Hon'ble Chief Justice and Companion Judges,
Bombay High Court at Panaji, Goa

THIS HUMBLE PETITION OF THE PETITIONER
MOST RESPECTFULLY SHOWS

Particulars of the Cause Against which PIL is filed

1. The State of Goa has notified its policy for utilization of available open plots in CRZ III zone for the purpose of establishing hotels/beach resorts in the state of Goa as per the Coastal Regulation Zone Notification 1991/2011. This policy has been formulated pursuant to judgment of the Bombay High Court in writ petitions No. 422/1998 and No. 99/1999. The policy declared by Goa government as per order dated 10th June 2011 and notified in the official gazette dated 16th June 2011 is contrary to the findings and directions of the said judgment itself and also the provisions of the CRZ notification. Hence this PIL.

Particulars of the Petitioner

2. Petitioner is an environmental NGO based in Goa who has approached both this Hon'ble Court and the Hon'ble Supreme Court time and again over the past two decades, in public interest, for enforcement of the provisions of environment, wildlife, forest laws and the CRZ notification. Registration certificate and names of office bearers of the Society are annexed to the petition at ***Annexure A***. The annual income of the petitioner society is Rs. 4,09,944 (2010-2011). Petitioner states that there is no civil, criminal or revenue

litigation involving the petitioner organization which has or could have a legal nexus with the issue involved in this PIL. Undertaking that the petitioner will disclose the source of information leading to the filing of the PIL is at ***Annexure B***.

Declaration of Petitioner

3. Petitioner states that this petition is filed by way of public interest and the petitioner does not have any personal interest in the matter. The PIL is filed in the interests of protecting the coastal environment from degradation and to further the needs of sustainable development.

4. Petitioner states that the entire litigation costs and other charges are being borne by the petitioner organization. Petitioner's advocate has taken up the matter *pro bono* and no legal fees are charged to the organization.

5. Petitioner states that a thorough research has been conducted in the matter raised through the petition and all relevant material has been annexed to the petition.

6. Petitioner states that to the best of petitioner's knowledge and research the issue raised in this petition was not dealt with or decided and that a similar or identical petition was not filed earlier by the petitioner on the same matter either in this Hon'ble Court or in the Supreme Court of India.

7. Petitioner has understood that in the course of hearing of this petition, the Court may require any security to be furnished towards

costs or any other charges and the petitioner shall comply with such requirements.

Facts constituting the cause

8. By its judgement dated 13th October 2006 delivered in W.P. 422/98 and 99/99, this Hon'ble Court directed the State of Goa, among other things, to identify the open plots in the CRZ III zone which are available for construction of hotels and to frame appropriate policy / regulation for utilization thereof before they are allowed to be utilized for construction of such activities. Copy of the judgement is at ***Annexure C***.

9. Pursuant to the said judgment, the government of Goa has taken approximately four years to formulate its policy relating to location of beach resorts in the state of Goa in terms of the CRZ Notification. Copy of the policy was filed in this Court on 4th July 2011 and is herewith annexed as ***Annexure D***. As per the maps annexed to the policy, the government has decided to demarcate all plots in excess of 4000 sq. mts. as permissible for development of beach resorts.

10. The policy indicates that development of beach resorts is subject to these open plots not falling in forest areas, sand dune areas and cultivated areas. In no case, however, has identification been done of such areas and the policy shows all the plots as permissible for resorts. Even in coastal stretches designated as CRZ I, for example turtle nesting sites, the plots above 4000 sq. mts are shown in the notified policy as permissible for location of resorts,

even though there is an explicit bar as per the provisions of the CRZ Notification dated 6.1.2011 and this Hon'ble Court has also protected turtle-nesting designated beaches from development activities. Petitioner craves leave to produce and rely on relevant orders of this Hon'ble Court in this regard, if necessary.

11. The judgement of this Hon'ble Court in W.P 422/98, at paras 12, 13, 18, 20 and 30, is very clear on the aspect of location of resorts in the CRZ III. The Court has also observed that the authorities had violated the CRZ Notification by permitting hotels to be located anywhere in the CRZ III, without paying proper attention to the provisions of the CRZ Notification in this regard.

12. In para 20, 12 the Court finds that the expression "vacant plots" is not unintentional or meaningless and that its relevance can be realized on proper reading of the notification. It further observes that the area between 200-500 mts is essentially for dwelling houses within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans.

13. In para 13, the Court finds that as per the 1991 notification, beach resorts and hotels are the "exception" and are permitted only in the vacant plots of the said zone.

14. At para 18, the Court refers to the fact that people in the village usually prefer to live in reasonable proximity to each other and thus the settlement or gaothan area in the village is developed consequent to the habitation of the villagers constructing their dwelling units.

15. In para 20, the Court concludes that permitting the construction of hotels/beach resorts in terms of CRZ III (ii), in the vacant plots within the said area is totally different from allowing the construction of hotel rooms and shops within the area which is required to be utilized for the construction of dwelling units. The Court observes: "Certainly construction of hotels and beach resorts would not be permissible within the locality wherein there exist the dwelling units. Hotel construction would be permissible only in the vacant plots situated within the said zone. The provision in that regard is very clear under clause (ii) and also disapproval for such construction under clause (iii) of the said CRZ Notification. Obviously the respondent / authorities seem to have granted permission in disregard to the provisions comprised under the said Notification and in particular clause (iii) thereof. The permissions appear to have been granted indiscriminately for all types of development in the area which is essentially meant only for construction or reconstruction of dwelling units in accordance with the provisions of law comprised under the clause (iii) of the said CRZ Notification. Certainly this is a clear violation of the CRZ Notification by the authorities and therefore, would require necessary directions in that regard."

16. In para 30, the Court explicitly requires the authorities to ascertain "whether any hotel or shop or any structure other than dwelling units had been permitted and constructed in such areas, not in open plots but in the locality comprised of dwelling units after

19th February 1991 and to take appropriate action in relation thereto in accordance with the provisions of law."

17. Thus, it is abundantly clear that the construction of resorts and of dwelling units is required to be in mutually exclusive areas of the same CRZ III zone. Therefore, this Hon'ble Court issued a specific direction to the authorities to identify open plots in the CRZ III zone which are available for the construction of hotels and to frame appropriate policy for their utilization.

18. The CRZ Notification permits beach resorts only in "designated" or "stipulated" areas of CRZ III. This implies that:

a) In the CRZ III, areas having vacant plots must first be selected / identified for purpose of construction of resorts and they must be stipulated / designated for the said purpose. In other words, entire CRZ III vacant plots cannot be made available for construction of resorts. The areas for hotels must be selected and the areas must be stipulated / designated accordingly.

b) No resorts in any case are permitted within the village gaothan / dwelling locality of the village.

19. The impugned policy, however, is not in consonance with either of the above requirements. Firstly, the policy shows all vacant plots as available for construction of hotels. There are no stipulated / designated zones for hotel construction. Secondly, the policy has notified several plots within dwelling locality areas as permissible for resort construction. Annexed to this petition as ***Annexure E*** are some maps from the policy document which indicate resorts

permitted within the dwelling locality areas / gaothan of CRZ III. In addition, the policy also shows plots in CRZ I areas as permissible for resorts.

20. In fact, the present policy actually tries to legitimize the earlier practice (which was not based on any policy) and through which resorts were indiscriminately permitted anywhere in the State, even in residential areas without examination of ecological features or carrying capacity. The Court, in fact, has issued directions for identification of those units which were permitted in violation of the CRZ notification.

Source of Information

21. The policy for location of beach resorts has recently been notified in the Government of Goa Gazette.

Nature and extent of Injury caused / apprehended

22. If the notified policy becomes the basis of permitting development of beach resorts, this would have consequences that are expressly prohibited by the CRZ Notification, i.e., permitting resorts in undesignated areas and within human settlements. This would lead to degradation of the coastal areas in their totality. Such a policy is also likely to introduce in all the coastal areas of the State the kind of conflicts – caused by sewage discharge, loud music, incessant vehicular traffic, blockage of traditional access etc. – which are presently witnessed only in some villages where hotels and dwelling houses lie in close proximity to each other.

Representations made

23. The notified policy has been prepared in pursuance of directions issued by this Hon'ble Court in writ petitions filed by the petitioner organisation.

Delay, if any in filing the petition

24. There is no delay in filing of this petition since the policy has been notified in the Government Gazette only in June 2011 and filed in the record of this Hon'ble Court in July 2011. Hence there is no delay.

Documents relied upon

25. Petitioners rely upon the following documents

a) Copy of the order of this Hon'ble Court dated 13.10.2006
b) Policy approved on 10.6.2011 and notified on 16.6.2011.

Reliefs prayed for:

26. Petitioner is therefore approaching this Hon'ble Court for the following reliefs, among others:

Prayers:

a) For an order or an order in the nature of a writ quashing the policy approved dated 10th June 2011 and notified on 16th June 2011.

b) For an order directing the Resp.No.1 to modify the impugned policy in accordance with the CRZ Notification and the High Court judgement dated 13.10.2006.

c) For any other reliefs this court may be pleased to grant.

d) For costs of this petition.

Interim directions prayed for:

e) Pending hearing and final disposal of this petition, for an order staying the operation of the impugned policy and reverting to the status obtaining pursuant to the judgment dated 13. 10.2006.

f) Pending hearing and final disposal of this petition, for an order directing the Resp. No.1 to identify and demarcate the sand dunes, forest lands, mangroves, turtle nesting beaches and any similar ecosensitive areas which would prohibit construction activity in such areas in the CRZ III, within strict time-frame.

Caveat

Petitioner states that no caveat has been received of lodging a caveat by the opposite party.

Place: Panaji
Dated the __ day of _____2011 Petitioner

Advocate for Petitioner

ANNEXURE A N 11

2 RS

INDIA

TWO RUPEES TWO RUPEES

CERTIFIED COPY

It is hereby certified that the file No. 23/Goa/86 existing in the records of this Office relating to the registration of the Society The GOA FOUNDATION contains a Certificate of Registration which is as follows:-

" CERTIFICATE OF REGISTRATION "

(See rule 5)

(The Societies Registration Act, 1860)

(Central Act 21 of 1860)

Registered No. 23/Goa/86.

It is certified that the Society The GOA FOUNDATION has this day been duly registered under the Societies Registration Act, 1860 (Central Act 21 of 1860).

Given under my hand this day of 11th March, 1986.

FOLLOWS THE SEAL OF:-

DISTRICT REGISTRAR
AND
HEAD OF NOTARY SERVICES
* PANAJI *

Sd/-
(D. V. Coissoro)
DISTRICT REGISTRAR
AND
HEAD OF NOTARY SERVICES.

P.T.O.

LIST OF OFFICE BEARERS OF GOA FOUNDATION AS SUBMITTED TO REGISTRAR OF SOCIETIES

SCHEDULE I

(See rule 6)

Statement of annual list of persons referred to in Section 4 of Societies Registration Act, 1860

Name and address of the Society: THE GOA FOUNDATION
Registration No. under the Societies Registration Act, 1860: 23/GOA/86
Date of election and period for which elected: 30.9.2010 FOR THREE YEARS
Period for which the list is filled: 30.9.2010 – 30.9.2013

Sr. No.	Name	Address	Occupation	Age	Designation
1	2	3	4	5	6
1.	Mathias Vaz	Rua da Ourem, Panaji Goa	Printer	62	President
2.	Claude Alvares	Almeidavaddo, Parra, Goa	Publisher	62	Secretary
3.	Christine Fernandes	Rua da Ourem, Panaji, Goa	Service	49	Treasurer
4.	Dinesh Dias	Defence Colony, Porvorim	Retired	55	Exec. Member
5.	Dean D'Cruz	Defence Colony, Porvorim	Architect	50	Exec. Member

Date: 8.12.2010

Signature

Name and Designation of the Signatory

The Goa Foundation

G-8, St Britto's Apartments
Feira Alta, Mapusa 403507 Goa
www.goafoundation.org
email: goafoundation@gmail.com
Phones: 2263305/2256479

22.12.2010

TRUCOPY OF RESOLUTION

The following is a true copy of the resolution passed by the Goa Foundation at its General Body Meeting held on 30.9.2010 at Panaji:

"4. It was also resolved to authorize Dr Claude Alvares to file writ petitions, as earlier authorized, on issues of public interest in various courts as and when required. It was also resolved to authorize Dinesh Dias to sign petitions and affidavits on behalf of the Goa Foundation as and when Dr Alvares was not in station or unable for whatever reason from doing so."

Attested by:

(Mathias Vaz)
President

(Dr Claude Alvares)
Secretary

ANNEXURE B 14

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
GOA BENCH, AT PANAJI

PIL Writ Petition No. of 2011

The Goa Foundation)... Petitioners
v/s
GCZMA & ors)... Respondents

UNDERTAKING

I, Dr Claude Alvares, Secretary, the Goa Foundation, petitioner, undertake that I will disclose the source of information leading to the filing of the Public Interest Litigation if and when called upon by the Court to do so.

Panaji 29.7.2011 (Dr Claude Alvares)

ANNEXURE C 15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT GOA
WRIT PETITION NO.422 OF 1998
WITH
WRIT PETITION NO.99 OF 1999

WRIT PETITION NO.422 OF 1998

The Goa Foundation,
represented by its Secretary,
Dr.Claude Alvares, with
registered office at Rm.7,
Above Mapusa Clinic,
Mapusa 403 507 Goa. .. Petitioner

Vs.

1. The Panchayat of Candolim
through its Sarpanch,
Candolim, Bardez, Goa.

2. The Goa Coastal Zone Management
Authority, through its
Member-Secretary,
Dept. of Science Technology
& Environment, Opp.Saligao
Seminary, Saligao, Bardez,
Goa.

3. State of Goa,
through its Chief Secretary,
Secretariate, Panaji.

4. The Chief Town Planner,
Town and Country Planning
Department, Old Goa Medical
College Complex, Campal,
Panaji, Goa.

5. The Secretary,
Ministry of Environment &
Forests, Government of India,
Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi 110 003.

HIGH COURT OF JUDICATURE AT BOMBAY PANAJI BENCH GOA

6. Mrs.Hilda D'Souza,)
Major age,)
resident of Banmonwado,)
Candolim, Bardez, Goa.).. Respondents

--

Ms Norma Alvares, Advocate for the Petitioner.

Mrs.A.Agni with Mrs.N. Narvekar, Advocates for the Respondent No.1.

Shri S.S.Kantak, Advocate General with Ms G.Bhonsale, Additional Government Advocate for the Respondent Nos.3 and 4.

Shri E.P.Badrinarayan, Additional Central Government Standing Counsel for the Respondent No.5.

Shri M.S.Sonak, Advocate for the Intervenor/Respondent No.6.

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WRIT PETITION NO.99 OF 1999

The Goa Foundation,)
represented by its Secretary,)
Dr.Claude Alvares, with)
registered office at Rm.7,)
Above Mapusa Clinic,)
Mapusa 403 507 Goa.).. Petitioner

Vs.

1. The Panchayat of Calangute)
through its Sarpanch,)
Calangute, Bardez, Goa.)

2. The Goa Coastal Zone Management)
Authority, through its)
Member-Secretary,)
Department of Science,)
Technology & Environment,)
Opp.Saligao Seminary, Saligao,)
Bardez, Goa.)

H AT BOMBAY BENCH

3. State of Goa,
through its Chief Secretary,
Secretariate, Panaji.

4. The Chief Town Planner,
Town and Country Planning
Department, Old Goa Medical
College Complex, Campal,
Panaji, Goa.

5. The Secretary,
Ministry of Environment &
Forests, Government of India,
Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi 110 003. .. Respondents

--

Ms Norma Alvares, Advocate for the Petitioner.

Shri P.A.Kamat, Advocate for the Respondent No.1.

Shri S.S.Kantak, Advocate General with Ms G.Bhonsale, Additional Government Advocate for the Respondent Nos.3 and 4.

Shri E.P.Badrinarayan, Additional Central Government Standing Counsel for the Respondent No.5.

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CORAM : R.M.S.KHANDEPARKAR &

N.A.BRITTO, JJ

DATED : 13th OCTOBER, 2006

JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

AT BOMBAY PANAJI BENCH

2. Heard. In both these petitions, the petitioners seek to restrain the respondents authorities from granting permission for new residential units or development in the CRZ-III zone contrary to the provisions comprised under clause 6(2) CRZ-III (iii) of Annexure - I (hereinafter called as "the said clause") of the CRZ Notification dated 19th February, 1991 as amended till this date, hereinafter called as "the said CRZ notification", and further to remove all constructions in the said CRZ III zone in the village of Candolim and Calangute which have been constructed in violation of the said clause, as also to conduct an inquiry to fix responsibility for the large-scale violations of the said clause of the CRZ Notification and to take necessary action against and to ensure punishment to those who are responsible for such violations.

3. Under the said CRZ Notification, an area between 200 and 500 meters of High Tide Line, hereinafter called as "the said Zone" is earmarked as 'No Development Zone'. It is the case of the petitioners that the construction activities within the said zone are restricted for residential purposes subject to the conditions incorporated in the said clause, and accordingly it prohibits construction in excess of dwelling units twice the number of dwelling

BOMBAY PANAJI BENCH

units as existed in the said Zone on 19th February, 1991. As of 19th February, 1991 the total number of dwelling units in the said zone in the village of Candolim were 608 whereas in the village of Calangute, they were 946. The grievance of the petitioners is that the respondents authorities in violation of the said clause of the said CRZ Notification have granted approval to the dwelling units in excess of twice the number of the said dwelling units and a large portion of the land in the said Zone in the said two villages is virtually sought to be converted into a concrete jungle which paradokically the CRZ Notification had designed to prevent. The general principles on which the said CRZ Notification is based include control and restrictions over unwarranted development in the coastal areas essentially for ecological reasons without disturbing traditional rights and customary uses of dwellers and those enjoyed by the people of the coastal villages and that is why the said clause protects right to construct dwelling units and to organise daily life activities for the traditional inhabitants of the coastal villages as per their customary needs. It is the contention of the petitioners that the respondents authorities ignoring the object behind the said clause of the said CRZ Notification had been indiscriminately granting permission for new construction in the said zone which

AT BOMBAY PANAJI BENCH

not only needs to be stopped but action is required to be taken to restore the situation as was on 19th February, 1991 and to punish the guilty and those who are responsible for violation of the said CRZ Notification.

4. According to the respondents, the figure relating to the total number of dwelling units stated in the petitions is based on the survey which was conducted in the year 1970-71, and considering the same, structures in 1991 would be much more than those claimed by the petitioners. According to the 1991 Census which was conducted in February, 1990, the total number of residential houses in the village of Candolim was 1523 while number of households were 1563. According to the respondents, they have not granted any permission in violation of the said clause of the said CRZ Notification, and apart from the dwelling houses, there are also government buildings, religious premises and school buildings in the said area. The respondents have also sought to dispute the contention of the petitioners as regards the connotation of the expression "dwelling units". According to the respondents, the said expression refers to the entire structure or the building irrespective of the sub-units in a building or structure and the entire building is to be considered

AT BOMBAY PANAJI BENCH

as the one dwelling unit. Further, the coverage of the plot for the purpose of 33% rule, the same would relate to the plinth area of the building irrespective of how many separate families may occupy the same or how many floors the building has, and further for the purpose of understanding the meaning of doubling of the dwelling units, the same are to be counted plot wise. In a vacant plot, the construction of one or more unit can be permitted provided its total coverage area shall not exceed 33% of the plot area. Similarly, if the plot is already having two dwelling units, maximum of two or more can be permitted with, only restriction being related to the total permissible coverage of the plot i.e. 33% of the plot area. It is also sought to be argued on behalf of the respondents that there is inordinate delay in approaching the Court, and therefore, there is no justification for finding fault with the respondents in relation to the permissions which have already been granted or with the constructions, according to such permissions, which have already been completed in the said area.

5. It is to be noted that at the time of hearing for admission on 17th December, 1998, the learned Government Advocate appearing for the respondent Nos.3 and 4, viz. the State of Goa and the Chief Town

AT BOMBAY PANAJI BENCH

Planner, Town and Country Planning Department, on instructions from the said respondents, undertook not to grant any approval or licences for construction within the area lying between 200 to 500 meters from HTL and in CRZ III zone in the State of Goa. Similar assurance was also given on behalf of the concerned Village Panchayats. Further, on 6th May, 1999, the Learned Advocate General assured the Court that Coastal Zone Management Authority would not consider any application for approval of construction in the area comprised of said zone lying between 200 to 500 meters of HTL defined as the CRZ III zone in view of the fact that the clarification and further instructions were awaited from National Coastal Zone Management Authority, and further that as and when instructions/clarifications would be received from the said authority, the same would be placed before this Court for further directions. Thereafter, an application was moved being Civil Misc.Application No.329 of 2000 by the Government of Goa for relieving of its statement and assurances, however, the same came to be rejected by a reasoned order passed by this Court on 13th September, 2000.

6. Ms Norma Alvares, the learned advocate for the petitioners, while elaborating the contentions on behalf of the petitioners, submitted that the

construction activities which are permissible within the areas comprised between 200 and 500 metres of HTL in the coastal zone are essentially restricted to the dwelling houses in accordance with the clause 6(2) CRZ-III(iii) of the said CRZ Notification and the same permits only dwelling units which are within the ambit of traditional rights and customary uses such as fishing villages and gaothans and the total number of dwelling units, which could be allowed, should not be twice the number which existed on 19th February, 1991, total coverage on all the floors being restricted to 33% of the plot size, and the overall height of construction to 9 metres with only two floors including the ground floor. Reliance is sought to be placed in the decision of the Apex Court in the matter of **C.I.T., Madras v. K.S.Ratnaswamy**, reported in (1980) 2 SCC 548, **Smt.Jeewanti Pandey v. Kishan Chandra Pandey**, reported in AIR 1982 SC 3, and **Gulf Goans Hotels Co. Ltd. & Anr. v. Union of India & Ors.**, reported in 2000(2) Goa Law Times 187. Attention has also been drawn to the dictionary meaning of the term "dwelling unit", definition of the said expression under the Planning and Development Authority (Development Plan) Regulations, 2000 and interpretation of the said expression by the Goa Coastal Zone Management Authority, while contending that essentially the dwelling unit is a home, an

AT BOMBAY PANAJI BENCH

abode, and not merely a habitable place but indicates residency of a more permanent nature.

7. The learned Advocate General, on the other hand, while complaining about the absence of sufficient factual data regarding plot wise violation, if any, so as to appreciate the contention sought to be raised by the petitioners, more particularly in view of the clause (iii) of the said CRZ Notification refers to 33% of the plot size, submitted that the term "dwelling unit" has to be understood with reference to the floor area and pertaining to each plot. According to the learned Advocate General, there is no scope for restricting the dwelling units under the said clause to mean that it relates to an occupation by one family alone. An unit can include sub-units, and therefore, it will relate to the entire building irrespective of number of sub-units which may exist in one unit. Drawing attention to the clause (ii) of CRZ-II of the said CRZ Notification, it was contended that the very notification permits construction of hotels and beach resorts in the said area comprised between 200 and 500 metres of HTL. Being so, there is no scope to define the dwelling unit in the manner it is sought to be contended on behalf of the petitioners. As regards 33% of the plot area, the provision only requires 67% of the plot area

should remain open. In other words, if 33% of the plot area is occupied by plinth area and the structure, then it would satisfy requirement of keeping 67% of the plot area to be open. Reliance is sought to be placed in the decision of the Apex Court in **Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd. & Ors.**, reported in AIR 2001 SC 184, and of the Calcutta High Court in **People United for better Living in Calcutta- Public & Anr. v. State of West Bengal & Ors.**, reported in AIR 1993 Calcutta 215.

8. The Central Government in exercise of powers conferred under the provisions of the Environment (Protection) Act, 1986 (hereinafter called as "the said Act") and the rules made thereunder (hereinafter called as "the said rules") issued the said CRZ Notification classifying the coastal area in four categories for the purpose of regulating and restricting the development in such area as per the said CRZ Notification. The areas which are ecologically sensitive and important, such as national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to

AT BOMBAY PANAJI BENCH

rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government and which lies between Low Tide line and High Tide Line, have been categorised as CRZ-I. The areas which have already been developed upto or close to the shore-line and which are situated within the municipal limits or in other legally designated urban areas which are already substantially built up and which have been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains, are classified as CRZ-II. The coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands, except those designated as CRZ-1, CRZ-II or CRZ-III, are classified as CRZ-IV category.

9. CRZ-III zone, with which we are concerned in the matter in hand, comprises of areas which are relatively undisturbed and those which do not belong to either category CRZ-I or CRZ-II and they include coastal zones in the rural areas, either developed or undeveloped, and also areas within municipal limits or in other legally designated urban areas which are not substantially built up. As regards the areas in this category, the development therein is regulated and restricted under the said CRZ Notification in the following manner:

BOMBAY PANAJI BENCH

"CRZ-III

(i) The area upto 200 metres from the HTL is to be earmarked as 'No Development Zone'. ** [No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants]. However, the following uses may be permissible in this zone - agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt

BOMBAY BENCH

manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the HTL permitted so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than

IRE AT BOMBAY PANAJI

twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

*[Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no

other area is available for construction of such facilities].

(iv) . Reconstruction/alterations of an existing authorised building permitted subject to (i) to (iii) above."

10. The grievance essentially relates to the alleged non-compliance of the clause (iii) of the said CRZ Notification quoted above. It is the case of the petitioners that the said notification clearly regulates and restricts developments within the area of 200 and 500 metres of HTL as specified in clause (iii) quoted above of the said CRZ Notification. Whilst it regulates development to the extent of 33% of the plot size and permits construction activity to the extent of twice the total number of dwelling units as they existed on 19th February, 1991 and within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans and further the height of construction being restricted to 9 metres and two floors including the ground floor and to be utilised as dwelling units. The clause (iv) thereof further specifies that even reconstruction or alterations should be in terms of the clause (iii) of the said CRZ Notification. It is, therefore, the

AT BOMBAY FARAH

contention on behalf of the petitioners that in the course of grant of permission for new dwelling units, the number of dwelling units cannot be allowed to exceed twice the number of the units which existed on 19th February, 1991. Further that such dwelling units would not include development of land by builders and estate agents for commercial purposes but it would essentially be for the people who traditionally exercise their rights in those coastal areas such as fisherfolk, toddy tappers, horticulturist, etc. It is essentially for the dwelling units by the persons engaged in such traditional occupations which are prevalent in the coastal area.

11. Plain reading of the above quoted CRZ-III Notification would undoubtedly disclose that in the area between 200 and 500 metres of HTL, the development is sought to be regulated and restricted in terms of the clauses (ii), (iii) and (iv) thereof. While clause (iv) relates to reconstruction or alterations, it essentially provides that such reconstruction and alterations are permissible subject to the provisions in the clauses (i), (ii), and (iii) thereof. Obviously, clause (i) relates to the area upto 200 metres from the HTL with which we are not concerned in these petitions.

BOMBAY PANAJI BENCH

12. As regards the clause (ii) of CRZ-II of the said CRZ Notification, it undoubtedly permits construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions stipulated in the guidelines at Annexure-II of the said Notification. In addition, the clause specifically refers to "development of vacant plots between 200 and 500 metres of HTL." The expression "vacant plots" is not unintentional or meaningless. The relevancy of the said expression in the said clause can at once be realised on proper reading of the clause (iii) of the said CRZ Notification. The clause (iii) thereof refers to "construction/reconstruction of dwelling units between 200 and 500 metres of the HTL." In other words, while the clause (iii) specifically refers to the development of an area lying between 200 and 500 metres of HTL exclusively for construction or reconstruction of the dwelling units, the open plots in such area are allowed to be utilised for construction of the hotels in terms of the clause (ii) thereof. The expression "construction/reconstruction of dwelling units" in clause (iii) further refers to "within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans". It is settled principle of law of interpretation that no word in a statutory provision including the one in

RE AT BOMBAY PANAJI BENCH

- Cl (iii) restricts construction activity to dwelling units of persons engaged in trad. occupation in such locality in the coastal area.
- Cl (ii) the exception – hotels in vacant plots
- Nature of area "relatively undisturbed" 19 –
- Primary activity for dwellings constr. in gaothan. Exception – hotels in vacant plot.

the subordinate legislation can be presumed to be redundant or unintentional. Reference to the "traditional rights" and "customary uses" while regulating construction activities of dwelling units in the coastal area is neither unintentional nor insignificant but evidently it discloses the intention of the framers of the law that the construction activities of dwelling units have to be "within the ambit of traditional rights and customary uses" prevalent and practiced in the concerned locality i.e. coastal area. Obviously, it will relate to the persons engaged in traditional occupations in such locality in the coastal area which would include fishing, toddy tapping, plantation, etc., otherwise the framers of the law would not have occasion to restrict the activity of construction of dwelling units "within the ambit of traditional rights and customary uses". The said expression essentially discloses that the law makers have considered the importance and necessity of and have, therefore, granted recognition to the activities of the nature of traditional occupations in such coastal area and that has been described as the ambit of extent to which the construction activities can be permitted to have the dwelling units in the said area.

13. It is pertinent to note that while on one hand

construction of hotels and beach resorts are permissible in the vacant plots in the said area, on the other hand, construction activity which is permissible under the clause (iii) relates to the dwelling units. It does not relate to construction activity otherwise than dwelling units. Further it restricts such construction activities to be within the ambit specified thereunder. While reading the said provision, one should not ignore the description of the category CRZ-III under the said CRZ Notification which specifically speaks of "relatively undisturbed" area. At the same time, the category CRZ-II which is also close to the shore-line has been specifically classified as "developed area." This apparently shows that the framers of the law did not contemplate any construction activity within the area of 200 to 500 metres of HTL otherwise than the one specifically stated in the clauses (ii) and (iii) of the said Notification and they are dwelling units, with one exception in favour of hotels and beach resorts but only in vacant plots in the said zone. The petitioners are justified in contending that the construction activities in the said zone would not include construction of the buildings by the builders or developers for commercial purposes.

14. The connotation of term "dwelling unit" has

been of major controversy between the parties. Undisputedly, the term has not been defined either in the said CRZ Notification or under said Environment Act, or the said rules. However, the Planning and Development Authority (Development Plan) Regulations, 1989 issued under Section 141 of the Goa, Daman and Diu, Town and Country Planning Act, 1974 defines the term "dwelling" to mean a building or a portion thereof which is designed or used wholly or principally for residential purpose. Likewise, the Planning and Development Authority (Development Plan) Regulations, 2000 issued under Section 141 of the Goa, Daman and Diu, Town and Country Planning Act, 1974 defines the term "dwelling unit" to mean a habitable place, which should be provided with a kitchen, a W.C. and a bathroom. In common parlance a dwelling unit would obviously mean a built up structure which is meant for habitation provided it is equipped with necessary amenities like kitchen, toilet, living room and bedroom. Normally an unit would include sub-unit. However, considering the provisions of law comprised under the clause (iii) of the said CRZ Notification and various restrictions specified in relation to the dwelling units under the said clause, it is implicit that the expression "dwelling unit" under the said clause refers to unit which is commonly understood as the one sufficient to make a place for habitation in

E AT BOMBAY PANAJI BENCH

the sense that it is equipped with necessary amenities like the living room, bedroom, kitchen and toilet. Any other meaning to the dwelling unit under the said clause would virtually result in rendering the said clause to be totally redundant. It is to be noted that the clause specifically prohibits the increase in the "total number of dwelling units" beyond the "twice number of existing units". It further provides that total covered area on all floors, the total number of floors inclusive of ground floor should not exceed 33% of the plot size. The overall height of construction cannot exceed 9 metres. In addition, as already stated above, construction and/or reconstruction of dwelling units is permissible within the ambit of traditional rights and customary uses. Taking into consideration all these aspects under the said clause, obviously the "dwelling unit" has essentially to be a home or abode indicating residency of permanent nature. Even the National Coastal Zone Management Authority in its meeting held on 6th May, 2004 had accepted that the definition of the word "dwelling unit" has to be in terms of the building by-laws adopted by the State Government. Undoubtedly, the Ministry of Environment and Forests had advised for further examination in detail about the terminology used in the said CRZ Notification. Nevertheless, the concerned authorities have accepted that the same is

BOMBAY BENCH

to be understood as defined under the respective building bye-laws. The definition of the said term as provided by the Planning and Development Authorities Regulations in Goa is on par with common understanding of the said terminology i.e. the unit which is equipped with necessary amenities like kitchen, bedroom, toilet and bathroom.

15. Undoubtedly, in a building, there could be more than one unit. However, for the purpose of clause (iii) of the said Notification, it cannot be said that the entire building comprising of such units will have to be understood as the one unit. A building comprising of different units will have to be considered as consisting of more than one unit. We hasten to clarify that this will have to be understood with reference to the area between 200 and 500 metres of HTL i.e. CRZ-III zone. The same definition may not be understood in relation to the other area or zone as the definition has to be understood with reference to the said clause which necessarily relates to an area between 200 and 500 metres of HTL. Albeit, the old houses will have to be distinguished in comparison to the buildings which normally comprise of flats which would obviously disclose separate dwelling units in the same building. Obviously, old bungalow type family house in a village will have to be

considered as one dwelling unit. Merely because in such a house, with the passage of time, the occupants thereof might have erected partition to protect privacy of couples staying in such houses, that by itself will not transform the house into multiple units. However, the same rule cannot be applied to a building comprising of different flats which is essentially planned and built to accommodate each family separately and independently. The nature of the structure at the time it was built is most relevant factor to be taken into consideration to decide whether it is one unit or more. Subsequent interior changes cannot be of any relevance.

16. As regards the point relating to 33% of the plot size, while it is the contention on behalf of the petitioners that the figure of 33% refers to the total floor area of dwelling units, according to the respondents, it relates to the total plinth area. The basis for the argument about its reference to the plinth area is that since it permits occupation of 33%, it essentially requires 67% of the plot to be kept open. The contention is totally devoid of substance. The provisions of law comprised under the clause (iii) while prescribing permissible limit of coverage to 33% of the plot size specifically refer to "total covered area on all floors". The relevant

HIGH COURT BOMBAY BENCH AURANGABAD

portion in that regard reads thus:-

> "total covered area on all floors shall not exceed 33% of the plot size."

The provisions of law being very clear as regards the coverage being referable to the total area of all the floors, one fails to understand the logic behind the argument that 33% covered area would merely require an area of 67% of the plot to be kept open. Once the law clearly provides that the percentage regarding coverage of the plot is referable to the total area of all the floors, the question of referring the coverage to the plinth area does not arise.

17. There is no dispute on the point of maximum height of 9 metres and total number of floors permissible being two floors, including ground floor, under the said clause of the said CRZ Notification.

18. The next point which requires consideration relates to the restriction regarding doubling of the units. The question is whether it is in relation to each plot or to the entire area in a village lying between 200 and 500 metres of HTL. Plain reading of the clause quoted above would disclose that as far as restriction relating to 33% coverage is concerned, the

AT BOMBAY PANAJI BENCH

same specifically refers to the plot size; however, in relation to the restriction to the extent of doubling the dwelling units, the clause nowhere refers to a plot as such. Indeed, the framers of the law in their wisdom have avoided to refer the clause relating to the restriction of doubling units to a plot area and in our opinion, rightly so. It is to the common knowledge that in the villages, the people usually prefer to live in reasonable proximity to each other. The settlement or the gaothan area in the village is developed consequent to the habitation of the villagers by constructing their residential accommodations. Apart from the safety point, culture and traditions also contribute to this method of habitation by the villagers. Being so, if the restriction regarding doubling of the units is related to the plot size, it may cause great hardship to the villagers in having their dwelling units in such area. For example, if the plot consists of 5000 sq. metres of an area and there are already five dwelling units and on account of increase of family members, if they want to have more dwelling units the restriction of doubling would not permit them to construct more than five units in addition to the existing five units. For that purpose, they will have to have their dwelling units in different plot inspite of the fact that the land for construction of dwelling units

E AT BOMBAY PANAJI BENCH

within their plot is available. At the same time, since undue increase in the dwelling units is to be prevented, the restriction to the extent of 33% of the plot area is required to be observed. Bearing these in mind, therefore, it is difficult to relate the concept of doubling of the units to a plot. It will have to be considered as referable to the total number of units in the total area between 200 and 500 metres of HTL in a village. This is also clear from the very clause which speaks of "total number of dwelling units". While referring to the permissible construction or reconstruction between 200 and 500 metres of HTL, the expression used being "total number of dwelling units", obviously, it has to relate to the entire area situated between 200 and 500 metres of HTL in a village.

19. The Apex Court in **M.C.Mehta v. Union of India & Ors.**, reported in 2004 AIR SCW 4033 had clearly observed that the development has to go on because one cannot lose sight of the need thereof. However, while holding so, the Apex Court also ruled in favour of protection of environment and highlighted the need to strike the balance in that regard, and therefore, cautioned that :-

"..... protection of environment

AT BOMBAY PANAJI BENCH

(1) Constr. of hotels not permitted in area for constr. of dwelling unit 42
(2) Constr. of hotels only in vacant plots in CRZ III
(3) Disapproval in Clause (iii) for hotels
(4) Permissions were granted indiscriminately in area meant for dwelling units
(5) Permissions for hotels in res. area – violation of CRZ.

would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

20. Going through the records placed before this Court in relation to the various constructions carried out after 19th February, 1991, particularly in the village of Candolim, it is apparent that in some cases, same person has been allowed to construct more than one unit when in fact some people have been allowed to construct shops, hotel rooms, etc. Permitting the construction of hotels or beach resorts in terms of the clause (ii) in the vacant plots within the said area (i.e. vacant area) is totally different from allowing the construction of hotel rooms and shops within the area which is required to be utilised for the construction of dwelling units (i.e. godhan). Certainly, construction of hotels and beach resorts would not be permissible within the locality wherein there exist the dwelling units. Hotel construction would be permissible only in the vacant plots situated within the said zone. The provision in that regard is very clear under clause

AT BOMBAY PANAJI BENCH

(ii), as also disapproval for such construction under the clause (iii) of the said CRZ Notification. Obviously, the respondent/authorities seem to have granted permission in disregard to the provisions comprised under the said Notification and in particular the clause (iii) thereof. The permissions appear to have been granted indiscriminately for all types of development in the area which is essentially meant only for construction or reconstruction of the dwelling units in accordance with the provisions of law comprised under the clause (iii) of the said CRZ Notification. Certainly, this is a clear violation of the CRZ Notification by the authorities, and therefore, would require necessary directions in that regard.

21. As regards the decision of the Apex Court in **K.S.Ratnaswamy's** case (supra) is concerned, undoubtedly, it refers to the meaning of the expression "dwelling place". However, that is with reference to the provisions under the Income Tax Act. Being so, that could not be of any help to understand the expression "dwelling unit" under the said Notification which does not relate to the tax matters but essentially relate to the construction activities in the fragile area covered by the CRZ Notification.

22. The decision in **Jeewanti Pandey's case (supra)** refers to the expression "residence" and the meaning thereof, but the same is in relation to the provision under the Hindu Marriage Act. Obviously, therefore, it is of no help to the petitioners or the respondents in understanding the meaning of dwelling units under the said CRZ Notification.

23. The Apex Court in **Diksha Holdings Pvt.Ltd.'s case (supra)**, while indicating the approach of the Court which should be in the matters concerning environment and development, had taken notice of the decision of the Calcutta High Court in **People United for Better Living in Calcutta's case (supra)**, wherein it was held thus:-

> "There is no manner of doubt that this issue of environmental degradation cannot but be termed to be a social problem and considering the growing awareness and considering the impact of this problem on the society in regard thereto, in my view, Law Courts should also rise up to the occasion to deal with the situation as it demands in the present day context; Law Courts have a social duty since it is a part of the society and as such, must

AT BOMBAY PANAJI BENCH

always function having due regard to the present day problems which the society faces. It is now a well-settled principle of law that socio-economic condition of the country cannot be ignored by a court of law. It is now a well-settled principle of law that while dealing with the matter, the social problems shall have to be dealt with in the way in the manner it calls for, since benefit to the society ought to be the prime consideration of the Law Courts and ecological imbalance being a social problem ought to be decided by a Court of law so that the society may thrive and prosper without any affection."

24. The Apex Court in the said **Diksha Holdings Pvt.Ltd.'s** case (supra) referring to its earlier decision in **Indian Council for Enviro Legal Action v. Union of India**, reported in (1996) 5 SCC 281, had observed that the Apex Court therein had indicated that with a view to protect the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and the prohibited activities should not be allowed to come up within the area declared as CRZ

notification. It was further ruled that "the Court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the Courts must scrupulously try to protect the ecology and environment and should shoulder greater responsibility of which the Court can have closer awareness and easy monitoring."

25. In **Gulf Goans Hotels Co.Ltd.'s case (supra)**, the Division Bench of this Court had held that the object of the legislation regarding protection of environment is to prevent degradation of the coastal areas including the sand dunes and ecologically sensitive areas. It was sought to be contended on behalf of the Panchayats by Mrs.Agni, the learned advocate appearing for the Panchayats that the contention that the construction activity in terms of the clause (iii) is permissible only by the locals has been rejected by this Court in the matter of **The Goa Foundation v. United Breweries & Ors.**, 2001(2)Goa L.T. 162 and the said issue stands finally decided. The contention is devoid of substance as the said decision nowhere deals with the said issue. It was only observed therein that though it was sought to be initially argued that the construction of the dwelling houses is permissible by the locals, in the course of

argument, the same was not pressed, and that therefore, it was not necessary to be decided. In any case, it is nobody's case that the development is permissible by locals only. We are concerned with the limitations as prescribed under clause (iii) of the said notification.

26. It was sought to be argued that the restriction for construction of only dwelling units within the area of 200 to 500 metres of HTL would virtually deny the rights of development to the property holders and it would be contrary to the mandate of Article 300-A of the Constitution of India. This contention is also devoid of substance. Article 300-A of the Constitution certainly prohibits deprivation of property save by authority of law. However, imposition of restriction on development does not amount to deprivation of the property. The regulations which are provided under clause (ii) and the restrictions imposed thereunder do not in any way amount to dispossessing or taking away the property otherwise than by authority of law. It merely regulates the construction activities and does not amount to taking away somebody's property.

27. Undoubtedly, the restrictions comprised under the said clause would discourage indiscriminate

construction activities in such areas. Merely because it will arrest the indiscriminate construction activities, that would not amount to prohibiting the development in such areas. Certainly, large-scale development is permissible in the area beyond the 500 metres of HTL. The restrictions have been imposed from the point of view of protection of environment and ecology and to avoid degradation thereof. Till and until the CRZ notification is in force, it has to be given effect in letter and spirit. Merely because some restrictions are imposed on the enjoyment of the property in relation to the construction activities in the coastal belt of 300 metres width, that by itself cannot amount to impose illegal or unwarranted or arbitrary restrictions. The restrictions are essentially for proper protection of the environment and ecology. It is well said that we have not inherited the earth from our fathers, but we have borrowed it for our children. Injudicious over exploitation of natural resources, including the land mass, would undoubtedly result in enormous degradation of the environment.

28. As regards the point relating to the objection raised by the respondents on the ground of laches, it is to be noted that it is a public interest litigation. The matter pertains to indiscriminate

violation of CRZ notification and in particular relating to the CRZ-III zone. The Apex Court in **Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group & Ors.**, reported in 2006 AIR SCW 1392 had clearly ruled that the delay should not be the sole ground to throw out a public interest litigation irrespective of merit of the matter or the stage thereof and that keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms relating to the applicability of rule of laches. In cases where the public authorities by misuse of their power try to virtually render the statutory provisions made for environment protection to be nugatory and act in a manner detrimental to the protection of environment in clear violation of the provisions of law made in that regard, the laches and delay cannot be a justification to give clean chit or carte blanche to such enemies of environment and allow them to go scot free at the cost of destruction of environment and ecology. No amount of delay can legalise the illegal acts, more particularly so, when the same relate to violation of environmental law and that too in relation to the CRZ-III zone.

29. The Courts are not only empowered but are also duty bound, as the enforcing authority of the

constitutional objectives to prevent all actions and activities, not only of the citizens but also of the State and public authorities which can upset or even affect the environmental balance. To protect and improve environment is the solemn duty of the every citizen, and albeit of the State and every public body. Environmental management while assuring due protection to the environment and ecology, is the obligatory function of every public body and that of the State, and in case of failure thereof, the Courts cannot remain to be silent spectators.

30. Undoubtedly during the period from 19th February, 1991 onwards the respondents authorities who were required to ensure proper implementation of CRZ notification did not bother to pay any attention towards performance of their obligation in that regard. The respondents have not bothered to give exact yearwise increase in dwelling units from 1991 onwards in CRZ-III zone in Goa. Considering the nature of controversy and their obligations under the Constitution and statutory provisions, the respondents were required to have all the data ready with them and ought to have disclosed the same to the Court, without waiting for the Court to inquire about the same. In fact, it appears that they have not bothered to maintain any record in that regard till this day. As

AT BOMBAY PANAJI BENCH

Auth. to identify hotels constr. in area meant for dwelling units — and take action 51

regards the exact number of dwelling units which were there in the CRZ-III zone in Goa on 19th February, 1991 and datewise increase thereof subsequent thereto, undoubtedly the concerned authority will have to undertake necessary survey as well as inquiry, which shall include physical verification of the dwelling units in such area, taking into consideration of the panchayat records relating to payment of house taxes, ration cards of the residents in the concerned area, licences granted for construction or reconstruction in the said area on or after 19th February, 1991, census reports, etc. and various other evidence which could be of help in the preparation of such record. Based on such survey and inquiry the concerned authority will have to identify the number of dwelling units in CRZ-III zone in each of the coastal villages and towns of Goa, which were in existence on 19th February, 1991 and which have been built thereafter. In case the number of dwelling units are found to have increased in excess of double the units which were there on 19th February, 1991, then the authorities will have to identify those units with reference to the date of permission granted to them for such construction and to take necessary action in respect of such unit according to law. The authorities will have to also ascertain whether any hotel or shop or any structure other than dwelling unit had been permitted and

AT BOMBAY PANAJI BENCH

constructed in such area, not in open plots, but in the locality comprised of dwelling units after 19th February, 1991 and to take appropriate action in relation thereto in accordance with the provisions of law. Of course, garage or a store room would form part of a dwelling unit. The respondents will have to identify whether there is any construction of the nature not permissible, has been permitted and/or constructed after 19th February, 1991 in the CRZ-III zone in Goa and to take action against the same in accordance with the provisions of law. Needless to say that rule of non-permissibility for construction other than dwelling house after 19th February, 1991 would not apply to such other structure which was already in existence in coastal zone on 19th February, 1991. The respondents are also required to take action against those who are responsible for violation of the provisions of CRZ notification in relation to the CRZ-III zone.

31. The concern shown by the petitioners for preventing degradation of environment and ecology in Goa and in particular on its coastal belt, specifically relating to CRZ-III zone is certainly appreciable.

32. The fall-out of the above discussion is that

the petitions succeed. While making the rule absolute in above terms, we hereby give the following directions to the respondents:-

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III zone in Goa, village or townwise as on 19th February, 1991 and increase in number thereof thereafter, datewise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures hotels and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in

accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilised for such construction activities.

(E) Till and until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or

AT BOMBAY PANAJI

renovation of the existing houses.

(F) The respondent No.5 to conduct inquiry and fix responsibility for the violation of the CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this Court in the first week after the

AT BOMBAY PANAJI BENCH

Summer Vacation of 2007, for necessary further order, if any.

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public and in that regard a web-site should be opened and the entire material should be displayed on the web-site. The respondent No.3 should ensure due compliance of this direction by 10th June, 2007.

AT BOMBAY PANAJI BENCH

(L) The respondent nos.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms.

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Date on which copy applied for 16-10-06
Date on which application completed 16-10-06
Date given for taking delivery 30-10-06
Date on which copy was ready 18-10-06
Date on which copy delivered 17-10-06

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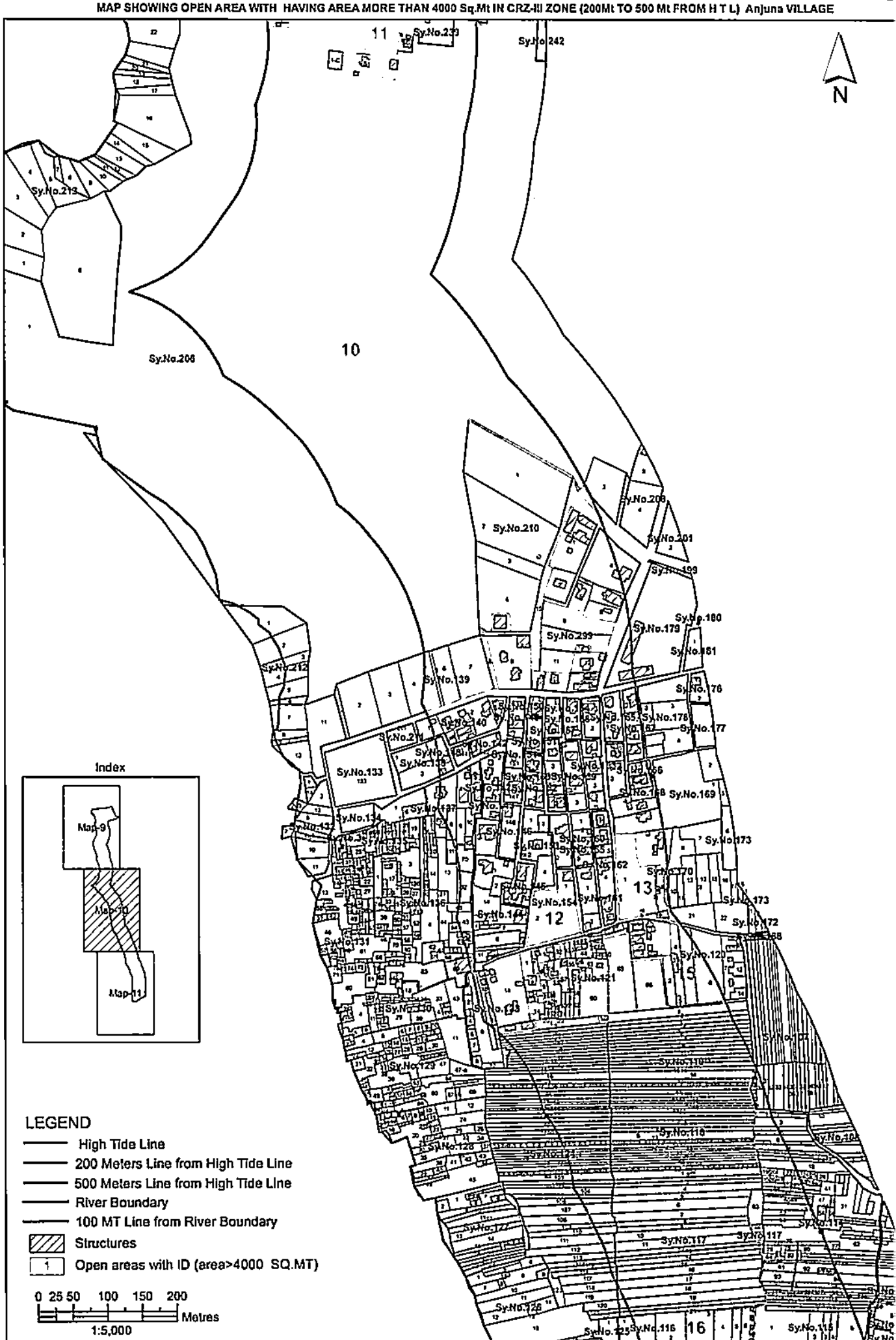
Rs.215=00

Section Officer
High Court at Bombay
Panaji Bench (Goa)

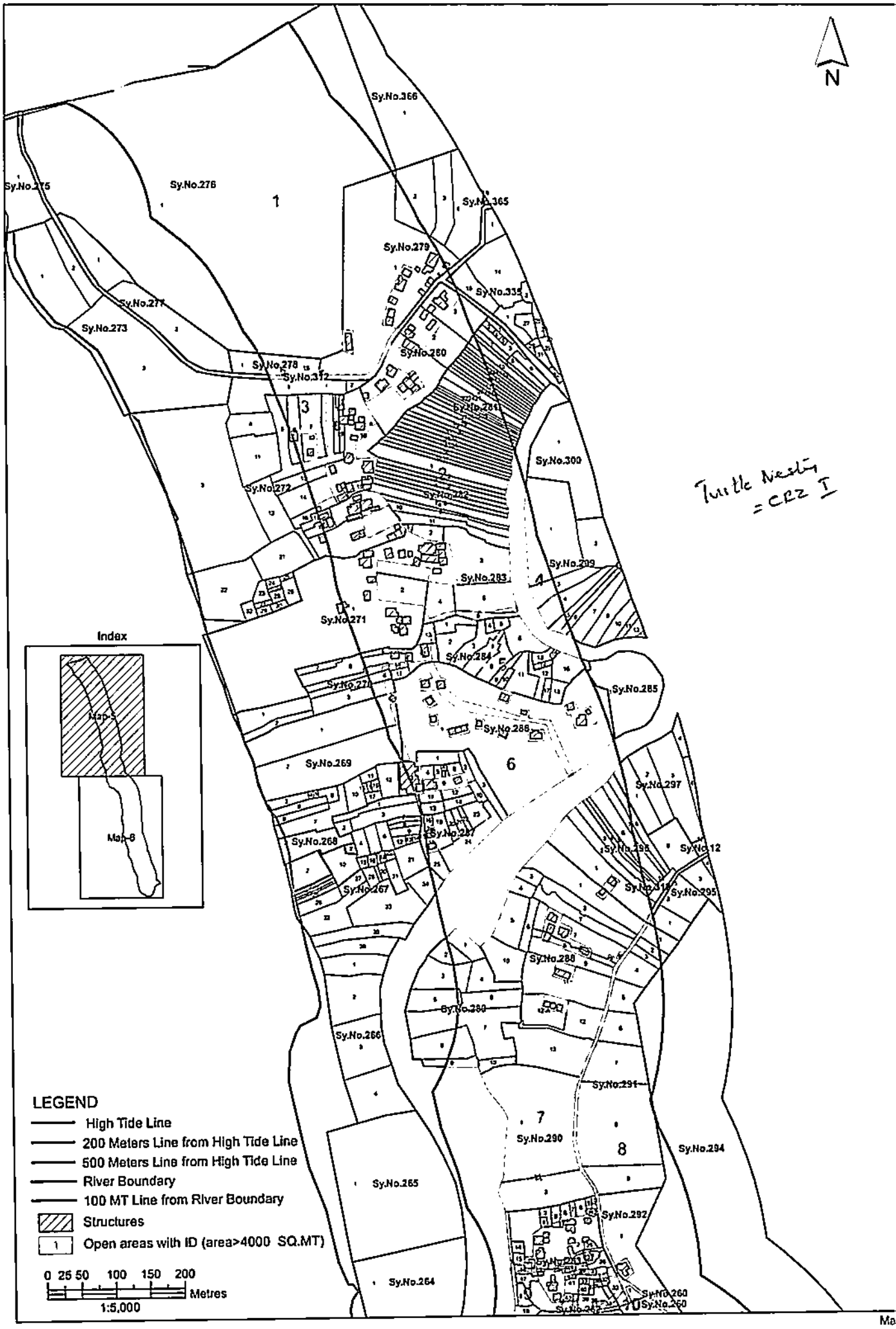
3455
17/10/06

ANNEXURE E 6

MAP SHOWING OPEN AREA WITH HAVING AREA MORE THAN 4000 Sq.Mt IN CRZ-III ZONE (200Mt TO 500 Mt FROM H T L) Anjuna VILLAGE



MAP SHOWING OPEN AREA WITH HAVING AREA MORE THAN 4000 Sq.Mt IN CRZ-III ZONE (200Mt TO 500 Mt FROM H T L) Mandrem VILLAGE



Turtle Nesting = CRZ I

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
GOA BENCH, AT PANAJI

PIL Writ Petition No. of 2011

The Goa Foundation)... Petitioners
v/s
GCZMA & ors)... Respondents

AFFIDAVIT IN SUPPORT OF THE PETITION

I, Dr Claude Alvares, Indian national, aged 62 years, resident of Parra, Bardez, Goa, do solemnly state on oath as under

1. I have today filed a writ petition in public interest for the reliefs sought therein.

2. I state that there is no personal gain, private motive or oblique reason in filing the PIL.

3. The petitioner is ready to pay costs as ordered by the Court, if it is ultimately held that the petition is frivolous or has been filed for extraneous considerations or that it lacks *bona fides.*

4. The petitioner shall disclose the source of its information, leading to the filing of the PIL, if and when called upon by the Court, to do so.

5. I solemnly declare and say that what has been stated in paragraphs 1(p), 2-9, 19(p), 21, 23-25 and 27 are true to the best of my knowledge and what is stated in paras 1(p), 10-18, 19(p), 20, 22 and 26 are in the nature of legal submissions and/or inferences of

facts, which I believe to be true. The documents annexed are true copies of their originals.

Solemnly affirmed at Panaji

this the ___ day of _____ 2011

Deponent

IN THE HIGH COURT OF BOMBAY AT GOA

PIL Writ Petition No. 29/2011

The Goa Foundation ... Petitioners

V/s

Goa Coastal Zone Management Authority & Ors. ... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 1

I, Mr. Michael M. D'Souza, major of age, Indian national, working as the Member Secretary of the Goa Coastal Zone Management Authority (GCZMA), having his office at Saligao Goa, do hereby on solemn affirmation state as under:

1. I am presently holding the charge of the Member Secretary of the Goa Coastal Zone Management Authority (GCZMA). I am filing this affidavit for the limited purpose of opposing admission of the petition and grant of any interim relief to the Petitioner. I crave leave to file a detailed reply if the petition is admitted. I have not specifically traversed each and every paragraph of the Petition. Any averment not specifically answered may therefore not be deemed to be admitted, since the reply is limited to opposing the admission of the petition and grant of interim relief.

2. I say that the Petitioner has filed the present Writ Petition challenging the "Policy for utilization of available open plots

in CRZ-III Zone for the purpose of establishing Hotels/Beach Resorts" (hereinafter referred to as the Policy).

3. I say that vide direction (D) contained in the Judgment of the Hon'ble High Court in Writ Petition No. 422 of 1998 and Writ Petition No. 99 of 1999 dated 13/10/2006, this Hon'ble High Court was pleased to direct the Respondent State Government / Goa Coastal Zone Management Authority to "identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy / regulation for utilization thereof before they are being allowed to be utilized for such construction".

4. I say that the GCZMA / Department of Science, Technology & Environment (DSTE) entrusted this task of identifying and delineating the open vacant plots above an area of 4000 sq. mts. in CRZ-III (along the coastline of the State) to M/s Remote Sensing Instruments (RSI), Hyderabad. I say that the process of identification and delineation of contiguous open plots (above 4000 sq. mts.) in CRZ-III areas was completed by the said agency. The said agency has overlaid the geo-referenced revenue maps and the locations of each of the open plots in terms of survey numbers and sub-divisions and their broad land-use pattern has also been tabulated.

I say that the details of the land use / land cover has been specified in form of an atlas, whose details are available on the DSTE website.

5. I say that the Petitioner has challenged the Policy on the ground that all the vacant plots have been identified as available for construction of Hotels/Beach Resorts irrespective of then being in CRZ-I areas, having sand dunes, forest areas, cultivated areas and also located within dwelling locality areas.

I humbly submit that the apprehensions expressed by the Petitioner are unfounded and misplaced.

6. I say that the identification of the vacant plots cannot be looked at in isolation and has to be read along with the policy as a whole.

7. I say that the Government while formulating the policy has clearly specified that various land features like forest, sand dunes, cultivable areas / status etc. would be identified separately during site inspection, to determine the suitability of the use of the land for the purpose of hotel / beach resort.

8. I say that the policy of the State Government takes into consideration two relevant guidelines

   (i) Provisions of New CRZ Notification, 2011 and guidelines for development of beach resorts or hotels in designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with prior approval of the Ministry of Environment and Forest, as contained in Annexure-III of CRZ Notification, 2011 (Appendix-I to the policy); which are further subject to the State Government Development& Panning Regulation and Policy: and

(ii) Provisions contained in Regional Plan for Goa, 2021. In the RPG, 21, all CRZ areas are classified as other Eco Sensitive Zone (Eco-2), whereas CRZ-I areas are classified as Eco-Sensitive Zone (Eco-1). Development of Hotels/ beach resorts as per the guidelines would be permissible only in Eco-2 and only in such areas that are identified as settlement.

It may be noted that CRZ-I areas are, areas that include Mangroves, Sand dunes, Mudflats, Salt marshes, turtle nesting grounds etc. As such these areas are well protected.

9. I say that in para (7) of the policy guidelines for considering project proposals for Hotels / beach resorts in CRZ-III areas has been detailed. These conditions are more restrictive and at every level there is a check and balance provided in the process of approving any proposal. There is in the first stage for assessment at the level of Goa-State Expert Appraisal Committee (Goa-SEAC) where additional terms of reference would be given, assessment done, proposal appraised after due site inspection with verification of Environmental Impact Assessment reports etc. Thereafter, the proposal is forwarded to GCZMA for its consideration and approval. In the third stage the Goa State Environmental Impact Assessment Authority (Goa-SEIAA) would be assessing the project. Only on receipt of a favorable recommendation would the State Government during the fourth stage of assessment take up for consideration the project proposal. After which as provided in CRZ Notification, 2011, the

proposal would be forwarded to Ministry of Environment and Forests for its consideration.

10. It is submitted that such a detailed process of analysis, assessment and appraisal, as detailed above should allay all apprehensions and fear of the petitioner. The role of all 3 authorities and the Government is towards environment protection and any hotel project that is detrimental to sustainable environment protection and development, cannot be considered.

11. I say that as per the provisions of CRZ Notification, 2011; Clause 8(i)(V)(3) CRZ of Goa, the State Government has to identify and map sand dunes mangroves, Khazan Lands and prepare management plans for turtle nesting sites at Mandrem, Morjim, Galgibag and Agonda.

12. I say that a project proposal has be received from M/s RSI, Hyderabad, the agency which carried out the task of identification of structures existing as in 1991 and those which came up subsequently, by temporal study of satellite imaginary between 1991 and 2006, followed by field checks as per directions of the Hon'ble High Court in Writ Petition No. 422 of 1998 and Writ Petition No. 99 of 1999. The project proposal is in respect of identification and mapping of areas of sand dunes, khazan lands and mangroves along Goa coast. This has been considered in the 59th GCZMA meeting held on 25/05/2011 and additional terms of reference have been given to include estuaries and riverine areas of the State. A detailed proposal is awaited and the

State Government will consider the proposal, make adequate fund provision, so that the project is completed within 09 months.

13. I say that in the meanwhile the data and mapping done of Eco-1 and Eco-2 areas in RPG-21 would be utilized for the purpose while dealing with the project proposal before the assessing authorities. In any case a detailed site inspection and verification as mandated in the hotel policy would being clarity on all issues viz. eco sensitive areas, cultivable status, no. of dwelling units in vicinity, infrastructural facilities, sanitation etc. and all other customary utilization by traditional communities within areas, also that their traditional livelihood mean if any are not affected.

I say that whatever is stated above in paragraphs 1(p), 2, 3, 4, 5(p), 6, 7, 8, 9, 10, 11, 12, 13 is true to my knowledge, based on records available in the office of this Respondent and the contents of the remaining paras are my submissions.

Solemnly affirmed at Panaji

On this 27th day of September, 2011 Deponent

Identified by:

(Adv. Abhijeet A. Kamat)

(72)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
GOA BENCH, AT PANAJI

PIL Writ Petition No.29 of 2011

The Goa Foundation	)... Petitioners
v/s	
GCZMA & ors	)... Respondents

REJOINDER AFFIDAVIT OF THE GOA FOUNDATION

I, Dr Claude Alvares, Secretary, petitioner organisation abovenamed, do hereby solemnly affirm as under:

1. I am filing this rejoinder with reference to the affidavit dated 27.9.2011 filed by the GCZMA (Resp.No.1).

2. With reference to the averments made in paras 3 to 7 of the said affidavit, I reiterate that there were two tasks assigned to the GCZMA:

a) Identify open plots in CRZ III which are available for construction of resorts and hotels;

b) Frame appropriate policy/regulations for use thereof.

3. I say that without completing direction (a), the GCZMA has attempted to comply with direction (b) and has issued a policy for utilisation of open plots. As regards direction (a), it has only commissioned an exercise to identify and delineate the open vacant plots above 4,000 sq.mts but it has not identified which of these are available for hotels. The exercise is thus clearly incomplete. It is

incumbent on the Respondent to identify the specific locations where it is permissible for hotels to be constructed as this is the mandate of the Hon'ble Court. Further, this is also a requirement in terms of the CRZ Notification 2011 which permits hotels to be set up only in **stipulated areas** of CRZ III. The present policy allows resorts everywhere along the coast. I say that the open spaces in which hotels may be allowed must first be identified before the GCZMA is permitted to consider any proposal for construction of hotels. Hence, until direction (a) is completed for the whole of the State, no hotels should be permitted to be approved on the basis of the impugned policy.

4. With reference to para 8, I submit that the statement in 8 (ii) that all CRZ I areas have been classified as Eco-1 in the Regional Plan and that no hotels are permitted in Eco-1 areas is not borne out by the Regional Plan document. For example, turtle nesting sites which are classified as CRZ I in the CRZ Notification 2011 are not designated as Eco-1 in the Regional Plan 2021. I am enclosing hereto as ***Exhibit P-1*** the notified Regional Plan 2021 for Mandrem panchayat. In the CRZ Notification 2011, Mandrem village is designated as CRZ I as it is a turtle nesting site. However, the Regional Plan for Mandrem panchayat does not designate Mandrem CRZ as Eco-1. In fact, no legend/index/symbol has been assigned to turtle nesting sites, though legend/index has been assigned to sand dunes, another CRZ-I feature. [Similar is the case with the other three turtle nesting sites of Morjim, Galgibaga and Agonda CRZ]. I say that the turtle nesting sites of Mandrem in fact have been shown as settlement, therefore Eco-II, in violation of the CRZ notification, 2011 and therefore not in harmony with it. From the GCZMA's affidavit it is

clear that hotels are being permitted in Eco-II area but in reality these are CRZ I zones and therefore should be Eco-I.

5. With reference to para 9, I say that the checks and balances referred to in the process of approving any proposal must follow on an independent and prior identification of the area where a hotel/s could be permitted. This exercise, if undertaken after the proposal for a hotel is made to the authorities, will always be subject to pressures from influential property owners. In fact, the procedure of environment appraisal, etc., that is spelt out in the said para is basically the same procedure (with some changes) that has been followed in Goa all these years and it has led to hotels being located anywhere and everywhere in the CRZ, as per the desires and clout of the project proponent and even in the midst of residential areas. It is precisely this unacceptable situation that the High Court sought to correct by the directions it issued in its judgement in W.P 422/1998. The Respondent's affidavit clearly discloses that the Government has not acted in accordance with these directives, even though it has taken five years for this task.

Solemnly affirmed, this
the ___day of October, 2011 Deponent